## AMIRUL SYUHADAH AREFIN v. TAN LYE SOON & ORS AND ANOTHER CASE

HIGH COURT MALAYA, ALOR SETAR
JOHAN LEE KIEN HOW J
[POST WINDING-UP NOS: KA-28PW-79-12-2024 & 28-33-11-2016]
19 AUGUST 2025

**Abstract** – *The court is vested with the jurisdiction to grant leave nunc pro tunc, or retrospective sanction, to a company in liquidation to continue legal proceedings. The exercise of this jurisdiction is, however, circumscribed by the three considerations articulated by the Federal Court in Lai King Lung & Anor v. Merais Sdn Bhd: (i) the application for such leave is made before the disposal of the main suit; (ii) the liquidator has sanctioned the commencement or continuation of the proceedings on behalf of the company; and (iii) the refusal to grant leave would occasion prejudice or result in a miscarriage of justice to the company in liquidation.*

***COMPANY LAW:*** *Winding up – Suit by company – Contributory of wound-up company ('company') commenced suit in name of company – Sanction from official receiver obtained after commencement of suit, via two sanction letters – Suit subsequently struck out by High Court – Company filed appeal, while contributory, separately filed application for leave nunc pro tunc or retrospective sanction ('leave') – Whether leave ought to be allowed – Whether three considerations articulated by Federal Court in Lai King Lung & Anor v. Merais Sdn Bhd satisfied – Whether refusal to grant leave would result in prejudice to company*

The applicant was a contributory of Gema Kukuh Sdn Bhd ('Gema Kukuh'), which was ordered to be wound up on 20 November 2016. On 27 August 2022, the applicant commenced an action in the name of Gema Kukuh in the Kuala Lumpur High Court ('KLHC suit'). The KLHC suit involved the first to third respondents as parties, where the third respondent was an intervener. The KLHC suit was filed without prior sanction from the liquidator. Subsequently, on 7 September 2022, the applicant applied to the Kedah branch of the Department of Insolvency, which was the appointed official receiver ('OR') and liquidator of Gema Kukuh, for sanction to continue the KLHC suit. By a letter dated 27 September 2022, the OR appointed Messrs Nanthini & Co to act for Gema Kukuh and granted sanction for the applicant to continue the KLHC suit ('first sanction letter'). On 16 April 2024, the third respondent objected to the validity of the first sanction letter, contending that, pursuant to *Small Medium Enterprise Development Bank Malaysia Bhd v. Oren Venture Sdn Bhd & Ors* ('*Oren Venture*'), a liquidator's powers to commence or defend proceedings could not be delegated. Considering this objection, the High Court directed the applicant to obtain

A further directions from the OR. Thereafter, the applicant wrote to the OR to inquire whether the OR intended to continue the KLHC suit on behalf of Gema Kukuh. In response, the OR issued a further letter confirming that: (i) sanction was granted to continue the KLHC suit, and (ii) Messrs Nanthini & Co were appointed to continue acting for Gema Kukuh ('second sanction B letter'). During case management on 16 October 2024, the presiding judge, on his own motion, raised the issue of whether the KLHC suit could be maintained and whether the second sanction letter was valid. On 19 December 2024, Gema Kukuh applied for a stay of proceedings in the KLHC suit, including a determination of the preliminary issue as to whether C the KLHC suit could be maintained. On 5 February 2025, the High Court dismissed the stay application and ruled in favour of the third respondent, striking out the KLHC suit on the ground that the suit could only be commenced by the liquidator and that the applicant lacked *locus standi*. Gema Kukuh subsequently filed an appeal to the Court of Appeal against that decision. Separately, the applicant filed the present application seeking D retrospective sanction (leave *nunc pro tunc*) to continue the KLHC suit ('application'). In support of the application, the applicant contended that the power to grant retrospective sanction lies with the court and may be exercised to cure procedural or technical defects in the interests of justice. The applicant further argued that *Oren Venture* was distinguishable, as no E application for leave *nunc pro tunc* was made in that case. In opposing the application, the third respondent maintained that the KLHC suit was commenced without proper sanction and argued that the present application was academic, given that the KLHC suit had been struck out on 5 February 2025 for want of *locus standi*. The third respondent also contended that a F retrospective sanction could not validate proceedings that were void *ab initio*.

**Held (allowing application):**

**(1)** The KLHC suit was decided on the issue of whether the suit could be maintained and continued. The 'preliminary issues to be tried' relied on by the third respondent rendered credence to this as the question posed G was '… whether the present suit, brought in the name of the plaintiff, can be maintained based on the following facts …' and not '… whether retrospective sanction can be granted …' or of something of equal effect. Therefore, the question of retrospective sanction had not been answered by the specific issues in the KLHC suit. Moreover, the applicant's case H clearly demarcated a line in the proverbial sand between the two sanction letters. The third respondent attempted to paint both letters as equals and that the same issue was applicable. This court disagreed with the said premise because the events which led to the creation of the letters were different. (paras 17 & 18)

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**(2)** The premise that the application had bearing on the KLHC suit, hence the application was void *ab initio*, was inaccurate. At the time this application was made, when the OR gave the sanction to continue the KLHC suit, the application was made in a timely manner. The second sanction letter in clear words mentioned that the sanction was to continue the suit and not to initiate the suit. The former was the subject matter of this application, while the latter was for the appeal to decide. As such, the test as laid out in *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd*, can be answered in the affirmative. The matter of retrospective sanction, post-sanction to continue the KLHC suit, was alive and still disputed. (paras 21 & 22)

**(3)** Within the analyses of cases by the Federal Court in *Lai King Lung & Anor v. Merais Sdn Bhd*, there appeared to be three considerations that a court need to take before granting leave *nunc pro tunc*: (i) there must be an application for leave *nunc pro tunc* by the company in liquidation and it must be made before the disposal of the main suit; (ii) whether the liquidator was incapable to initiate or maintain the case for a reason whether due to financial or otherwise, and thereby the liquidator issues sanctions for the suit to be commenced or continued by the company; and (iii) whether not granting the leave would form an issue of prejudice or miscarriage of justice. In this application, it was undisputed that the applicant had fulfilled the first and second considerations. What was left to be decided was the third consideration. (paras 27 & 28)

**(4)** The applicant would not be able to file the KLHC suit afresh after sanction was given because they were already out of time as the determination was made in 2016 and the issue only came to light in 2024 – some eight years later. The applicant also reasoned that they could not wait until the disposal of the appeal because the Court of Appeal would question the absence of attempts to regularise their situation, hence, this application. Moreover, before the solicitors for the applicant came on board, the applicant herself was ill-advised by the officers from the OR when she came to their offices for a sanction. The said officers had advised the applicant to file the writ first and thereafter write in to the OR for sanction after obtaining a case number. At that time, the principle in *Oren Venture* was new to the OR, which led to such erroneous advice. As such, this was an appropriate circumstance for granting leave *nunc pro tunc.* (para 31)

**Case(s) referred to:**

*City Properties Sdn Bhd v. Jalex Sdn Bhd [2024] CLJU 500 HC* ***(refd)***

*Hup Lee Coachbuilders Holdings Sdn Bhd v. Cycle & Carriage Bintang Bhd [2012] 10 CLJ 88 CA* ***(refd)***

*Lai King Lung & Anor v. Merais Sdn Bhd [2020] 9 CLJ 449 FC* ***(refd)***

*Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd [2006] 3 CLJ 177 FC* ***(refd)***

*Re Saunders (A Bankrupt); Re Bearman (A Bankrupt) [1997] Ch 60* ***(refd)***

*Reebok (M) Sdn Bhd v. CIMB Bank Bhd [2019] 9 CLJ 230 CA* ***(refd)***
*Small Medium Enterprise Development Bank Malaysia Bhd v. Blackrock Corporation Sdn Bhd & Ors [2017] 9 CLJ 45 CA* ***(dist)***
*Small Medium Enterprise Development Bank Malaysia Bhd v. Oren Venture Sdn Bhd & Ors And Another Case [2022] 6 CLJ 148 HC* ***(refd)***
*Winstech Engineering Sdn Bhd v. ESPL (M) Sdn Bhd [2014] 2 CLJ 1 FC* ***(refd)***

*For the petitioner - Nanthini Nair Ramakrishnan; M/s Nanthini & Co*
*For the 3rd respondent - Ooi Huey Miin & Marc Adrian Emuang; M/s Raja, Darryl & Loh*

*Reported by Syamim Ariffin*

**JUDGMENT**
*(encl. 1)*

**Johan Lee Kien How J:**

**Introduction**

**[1]** This judgment involves a curious and novel issue of retrospective sanction for a wound-up company.

**The Facts And Dispute**

**[2]** The case surrounds a company Gema Kukuh Sdn Bhd ("Gema Kukuh") which was wound up on 20 November 2016. The applicant is a contributory to Gema Kukuh. Through a series of eventful instances, beginning from a misguided advice from the Kedah branch of the Department of Insolvency to the late objection by the third respondent on the *locus* of the applicant on the eve of trial, and finally to the leave for appeal at the Court of Appeal; it finally led to this application for a retrospective sanction.

**[3]** The applicant claimed that on 27 September 2022, the Kedah branch of the Department of Insolvency, who was at the same time the official receiver ("the OR") appointed the solicitors for the applicant, Messrs Nanthini & Co to act for Gema Kukuh and for a sanction to continue a suit in the Kuala Lumpur High Court ("the KLHC suit") filed by the applicant. This will be referred as sanction letter one.

**[4]** On 16 April 2024, the applicant claimed that the solicitors for the intervener (now the third respondent), raised an objection on the validity of sanction letter one in view of the decision of *Small Medium Enterprise Development Bank Malaysia Bhd v. Oren Venture Sdn Bhd & Ors And Another Case* [2022] 6 CLJ 148; [2022] 12 MLJ 2475 that a liquidator's powers to commence and defend an action cannot be delegated. The trial judge then directed the applicant's solicitor to obtain further directions from the OR.

**[5]** Through a letter dated 6 May 2024 in response to the query from the applicant's solicitor, the OR informed and wrote to the applicant's solicitor that sanction to continue the action is granted. This will be referred as sanction letter two. The material paragraphs are as follows:

> 2. Lanjutan daripada Perintah Penggulungan bertarikh 20.11.2017, Pegawai Penerima telah dilantik sebagai Penyelesai bagi kes di atas.
>
> 3. Justeru, Pegawai Penerima dan Penyelesai bagi syarikat Gema Kukuh Sdn. Bhd. (No. Syarikat: 532015-W) (Dalam Penggulungan) **memberikan kebenaran kepada puan meneruskan tindakan** di Mahkamah Tinggi Kuala Lumpur, Guaman No. WA- 22C-63-08/2022 dan melantik Tetuan Nanthini & Co. untuk mewakili Pegawai Penerima dan Penyelesai bagi syarikat Gema Kukuh Sdn. Bhd. (No. Syarikat: 532015-W) (Dalam Penggulungan).
>
> (emphasis added)

**[6]** On 19 December 2024, Gema Kukuh applied for a stay of proceedings of the KLHC suit including the preliminary issue of whether the said suit can be maintained. Later on 5 February 2025, KLHC dismissed the application for stay and decided in favour of the third respondent on the preliminary issue, thus stroke out the KLHC suit. On the same day of the decision, Gema Kukuh filed an appeal against the said decision.

**[7]** Almost at the same time, the applicant in our present case filed this action in this court.

**The Applicant's Submissions**

**[8]** The applicant submitted that the authority to grant retrospective sanction lies with the court. This includes to ratify procedural or technical defects on the basis of preserving justice.

**[9]** The applicant relied on the principle propounded in *Re Saunders (A Bankrupt); Re Bearman (A Bankrupt)* [1997] Ch 60 where Lindsay J in the Chancery division decided to grant a leave *nunc pro tunc* as an exercise of discretion of the court to invoke the doctrine of ratification.

**[10]** The decision in *Re Saunders* was introduced and approved in the Malaysian court through the decision of Mohamed Apandi Ali FCJ in the case of *Winstech Engineering Sdn Bhd v. ESPL (M) Sdn Bhd* [2014] 2 CLJ 1; [2014] 3 MLJ 1 invoking the doctrine of ratification.

**[11]** The same was discussed in the case of *Reebok (M) Sdn Bhd v. CIMB Bank Bhd* [2019] 9 CLJ 230; [2018] MLJU 1116, where the Court of Appeal discussed and confirmed retrospective sanction can be approved by the court. These authorities confirm the power to order leave *nunc pro tunc*, or in simpler words, retrospective sanction is squarely within the jurisdiction of the court.

**[12]** Further, the application also contended that the decision in *Oren Venture* is distinguishable from the instant case as the applicant in *Oren Venture* did not file the necessary application to obtain leave *nunc pro tunc*, which is contrary to this application.

**The Third Respondent's Submissions**

**[13]** The third respondent was insistent that the suit commenced without proper court sanction. Their main argument is that the application is academic since the KLHC suit was struck out on 5 February 2025. This argument was based on *Oren Venture* (*supra*), *Hup Lee Coachbuilders Holdings Sdn Bhd v. Cycle & Carriage Bintang Bhd* [2012] 10 CLJ 88; [2013] 1 MLJ 406 and other authorities, where the cited authorities lay out the general rule that only a liquidator has the power to bring legal proceedings for a wound-up company.

**[14]** Further, the third respondent contended a contributory must obtain prior court sanction, and retrospective sanction cannot validate an action that was void *ab initio* due to lack of *locus* as per the decisions in *Small Medium Enterprise Development Bank Malaysia Bhd v. Blackrock Corporation Sdn Bhd & Ors* [2017] 9 CLJ 45; [2017] 6 MLJ 116 and *Hup Lee* (*supra*).

**The Decision**

*The Petition Is Not Academic*

**[15]** In view that the position on whether this petition is now academic was debated by counsel for both parties, I will briefly address this point for the sake of completeness. The test to determine whether a suit has become academic is laid down in the Federal Court case of *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd* [2006] 3 CLJ 177; [2006] 4 MLJ 113 where the decision of Augustine Paul FCJ at p. 189 (CLJ) in para 7; p. 120 (MLJ) in para. 9 described the test as whether there exists matter of actual controversy between the parties:

> The test, therefore, in deciding whether an appeal has become academic is to determine *whether there is in existence a matter in actual controversy between the parties which will affect them in some way. If the answer to the question is in the affirmative the appeal cannot be said to have become academic.*
>
> (emphasis added)

**[16]** Both parties, especially the third respondent, have submitted extensively on this. In their submissions, the third respondent purported that the issue in consideration – of whether retrospective sanction can be granted - has been decided in the KLHC suit and thus has been rendered academic. Meanwhile, the applicant takes up the position that the issue has yet to be disposed entirely and it is still alive pending decision by the Court of Appeal.

**[17]** It is my opinion that neither is entirely accurate. There are true statements to both positions, but ultimately in favour of the applicant. The decision of the KLHC suit was decided on the issue of whether the KLHC suit can be maintained and continued. The 'preliminary issues to be tried' relied by the third respondent renders credence to this as the question posed was "... whether the present suit, brought in the name of the plaintiff, can be maintained based on the following facts ..." and not "... whether retrospective sanction can be granted ..." or something of equal effect.

**[18]** Therefore, the effect is that the question of a retrospective sanction has not been answered by the specific issues of this case. Moreover, the applicant's case clearly demarcates a line in the proverbial sand between sanction letter one and sanction letter two. The third respondent attempts to paint both letters as equal and that the same issues apply. I disagree with the premise put forward by the third respondent when different events occurred leading up to the creation of the letters.

**[19]** For the sake of clarity, I reiterate the events for sanction letter one which transpired as follows:

(i) on 27 August 2022, the applicant filed and commenced the KLHC suit through a writ of summons;

(ii) on 7 September 2022, the applicant's solicitors applied to the Director of the Department of Insolvency through their Kedah branch for a sanction to continue the KLHC suit;

(iii) on 27 September 2022, the Department of Insolvency wrote back in their capacity as the OR granting sanction to a 'contributory' to commence and/or continue the KLHC suit; and

(iv) pursuant to an objection by the third respondent on 16 April 2024, the learned judge in the KLHC suit ordered for further direction from the OR.

**[20]** This leads to the events for sanction letter two, which should be read in a separate timeline:

(i) on 16 April 2022, the applicant's solicitors wrote to the OR and posed the issue whether the OR would continue the KLHC suit for Gema Kukuh;

(ii) on 6 May 2024, the OR sanctioned the act to continue the KLHC suit and appointed the applicant's solicitors to act on behalf of the OR;

(iii) during the case management on 16 October 2024, which was the eve of the trial presided by a new judge, Azlan bin Sulaiman, by his own motion raised the issue whether the KLHC suit can be maintained and whether sanction letter two was valid;

(iv) on 5 February 2025, the KLHC suit was struck out because it was not commenced by the liquidator in contravention of the provisions in the Companies Act 2016; and

(v) on 5 December 2024, the applicant filed this suit in an effort to rectify legal issues by obtaining a retrospective sanction. The language utilised by the third respondent was harsher, alleging that the applicant was also attempting to cure her absence of *locus standi* to commence the suit.

**[21]** From the timeline above, the premise that this application has bearing on the KLHC suit and thus void *ab initio* is inaccurate. At the time that this application was made, where the OR sanctioned to continue the KLHC suit, this application before me was made in a timely manner. Sanction letter two in clear words mentioned that the sanctioned action was to continue the suit and not to initiate the suit – the former, the subject matter of this application and the latter is for the appeal in the Court of Appeal to decide.

**[22]** Hence, the test laid out in *Metramac Corp* (*supra*) can be answered in the affirmative. The matter of retrospective sanction, post-sanction to continue the suit, is alive and still disputed. I shall proceed with the other issues of contention.

*Principles For Leave Nunc Pro Tunc Or Retrospective Sanction*

**[23]** During submissions, both parties have argued extensively on the applicability of *Winstech*, quoted in *Lai King Lung & Anor v. Merais Sdn Bhd* [2020] 9 CLJ 449; [2020] 5 MLJ 614 as decided by Vernon Ong FCJ at para. 33:

> ... In contrast, in *Re Saunders*, it was the plaintiffs who applied for leave of the court to proceed against a bankrupt defendant; here, the primary decider is the court. Accordingly, the factual matrix and the law in issue are dissimilar. For the foregoing reasons, we do not think that the analogy to *Re Saunders* is appropriate or relevant. *Re Saunders does not support the proposition that retrospective sanction may be granted by a liquidator. As such, the Court of Appeal was under a misapprehension when it said that the Federal Court in Winstech acknowledged that following the English decision in Re Saunders that leave nunc pro tunc may be granted.* In the same vein, the Court of Appeal in Reebok fell into error when it misapprehended the *ratio decidendi* in *Winstech*.
>
> (emphasis added)

**[24]** The third respondent relied on this paragraph to further their contention that the apex court had decided that a retrospective sanction cannot be granted to a liquidated company. The applicant, however, raised a fair rebuttal where it was highlighted that in *Lai King Lung* the court had explicitly mentioned in para. 30 that the applicant did not make a formal application for leave *nunc pro tunc*, in direct contrast to the application before me:

> [30] In the appeal before us, the fact that *no formal application was made by the plaintiff in the Court of Appeal for leave nunc pro tunc* is undeniable on the appeal record. What transpired in the Court of Appeal was the hearing of the defendants' application to strike out the plaintiff's appeal. *Whether leave nunc pro tunc to ratify the retrospective sanction given by the liquidator was never in issue as there was no such application before the Court of Appeal*. At the hearing in the Court of Appeal, the defendants acknowledged that in appropriate circumstances the Court may grant retrospective leave *nunc pro tunc*; but that *this would require a formal application by the plaintiff*. However, *given that there was no formal application, supported by a properly deposed affidavit the defendants argued that there was therefore no material before the Court of Appeal to consider or justly grant any nunc pro tunc leave*.
>
> (emphasis added)

**[25]** In my reading of their submissions and hearing their clarifications, it is my finding that the third respondent had misinterpreted the *ratio* in *Lai King Lung* in the context it was decided. In the first place, the Federal Court noted that there was no formal application made by the plaintiff. The judgment then conducted an analysis of existing appellate decisions on the issue of granting of leave *nunc pro tunc* spanning from early 2000s to *Winstech* (*supra*), where the analysis of *Winstech* (*supra*) elucidated that under appropriate circumstances, a court may grant retrospective leave *nunc pro tunc* but not extend the OR/OA's sanction retrospectively. These 'appropriate circumstances' are not set in stone but are guided by legislation in place namely the Companies Act. In *Winstech* (*supra*), the Federal Court deemed that there should be an issue of prejudice and miscarriage of justice, which formed part of the reasoning for dismissing the application in the case. The converse happened in *Reebok* (*supra*), where the Court of Appeal granted leave as sanction was given by the liquidator to continue the proceedings even though it was given subsequent to the appeal. *Reebok* (*supra*) also considered a valid sanction may regularise the issue of *locus standi* and objections on the ground of *locus standi* are curable technical irregularities.

**[26]** This analysis was certainly beneficial to illustrate that the applicant's actions were in line with decided authorities. The third respondent's submissions misconceived that *Reebok* (*supra*) was considered erroneous by the Federal Court in *Lai King Lung* (*supra*) simply because leave *nunc pro tunc* could not be granted when a sanction was granted subsequent to the filing of a suit when, in fact it was because the Court of Appeal in *Reebok* (*supra*) decided a sanction can be extended retrospectively. There was nothing in the judgment to suggest the premise that a subsequent sanction is irretrievably irregular.

**[27]** Within the analyses of cases by the Federal Court in *Lai King Lung* (*supra*), there appears to be three considerations that a court needs to take before granting leave *nunc pro tunc*:

(i) there must be an application for leave *nunc pro tunc* by the company in liquidation and it must be made before the disposal of the main suit;

(ii) whether the liquidator is incapable to initiate or maintain the case for a reason whether due to financial or otherwise, and thereby the liquidator issues sanctions for the suit to be commenced or continued by the company; and

(iii) whether not granting the leave would form an issue of prejudice or miscarriage of justice.

**[28]** In the case before this court, it is undisputed that the applicant has fulfilled the first and second consideration. This application is the leave application, and that a sanction to continue was given by the OR in sanction letter two. What is left is to consider whether there is an issue of prejudice or miscarriage of justice.

**[29]** In *Re Saunders* (*supra*), a description for prejudice or miscarriage of justice was painted at p. 83:

> Given the practical inconveniences I have described and the injustices that can be left without possible remedy if retrospective leave is in no case possible, I share with the Full Bench in Lahore in 1942 the view that, if the section is capable of being read more than one way, there is no doubt which way entails the less injustice and inconvenience. If, as I hold, the words used are in their full historical context fairly capable of bearing more than one meaning, it is legitimate for me to adopt a meaning which gives effect to the statutory purpose, rather than frustrating it, as in my view an inflexible powerlessness to give leave even in the most glaring of cases would do ... .

**[30]** From the *locus classicus*, it was considered an injustice when a party is left without possible remedy if the retrospective leave was not possible. This line of questioning was also apparently inherent in the analyses of the Federal Court in *Lai King Lung* (*supra*), where it is treated as the breaking point of retrospective sanction applications. For example, in the case itself, the Federal Court was of the opinion that the plaintiff-applicant was able to file an extension of time to file the notice of appeal but did not do so as the plaintiff-applicant took the position that they had to file the notice of appeal within the prescribed time, and the liquidator had the power to grant retrospective sanction. In *Reebok* (*supra*), the Court of Appeal granted retrospective sanction (although erroneously on other grounds) as the solicitors had filed a notice of appeal to preserve their right of appeal while waiting for the requested sanction to materialise, which it did and provided a sweeping sanction similar to the case before this court.

**[31]** Therefore, taking a cue from the analysis of the Federal Court, this line of questioning was put forward to the applicant during their oral submissions *cum* clarification. The solicitor for the applicant was candid in their answer that they were not able to file the suit afresh after sanction was

given because they were already out of time as the determination was made in 2016 and the issue only came into light in 2024 – some eight years later. The applicant also reasoned that they were not able to wait until the Court of Appeal's disposal of appeal as the appellate court would have surely questioned absence of attempts to regularise their situation, hence this application. Moreover, before the solicitors for the applicant came on board, the applicant herself was ill-advised by officers from the OR when she came to their offices for a sanction. It was averred that said officers had advised her to file the writ first and thereafter write in to the department for sanction after obtaining a case number. It was also submitted that at the time, the principle in *Oren Venture* (*supra*) was new to the OR which led to this erroneous advice. To my mind, this is an appropriate circumstance that warrants leave *nunc pro tunc*.

**[32]** I am also further supported in this view through the decision of Ahmad Murad Abdul Aziz J in the case of *City Properties Sdn Bhd v. Jalex Sdn Bhd* [2024] CLJU 500; [2024] MLJU 494 where it was decided that it warranted a retrospective sanction in the situation where technical defects were capable of remedy. In the applicant's case, it extends beyond technical defect but to procedural ignorance by the OR themselves. This is undoubtedly a form of prejudice by no fault of the applicant. This was also the line of reasoning adopted in *Lai King Lung* (*supra*) seeing the only reason for the dismissal was the absence of a formal application.

## Conclusion

**[33]** Stemming from the authority of the official receiver as the liquidator, sanction to continue the KLHC suit was appropriately given. Therefore, I allow the applicant's application for leave *nunc pro tunc* to the extent of sanction letter two. This is to continue the KLHC suit with the applicant's solicitors as the appointed solicitors for the liquidator.

**[34]** The issue of whether there is sanction to initiate the suit is a question to be ventilated at the Court of Appeal and is not a subject of consideration of this judgment or, even, the application itself. As far as this court is concerned, sanction was only provided to continue the suit based on sanction letter two.